IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3928 OF 2006

Amiruddin K. F. Maulana & Ors. ..Petitioners.

Vs.

Mohammadali Abuddlla Sabuwala & anr. ..Respondents.

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Mr. R.A. Thorat with Mr. P.J. Thorat for the Petitioners.
Respondent present in person.

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CORAM: DR. D.Y. CHANDRACHUD, J.

10th July, 2006.

P.C. :

A decree for eviction has been passed by the Trial Court which has been confirmed by the Appellate Bench of the Small Causes Court. Defendant No.1(a) in the course of his cross examination specifically admitted that Garage No.1 was given to his mother in the year 1984. Moreover, in the course of the cross examination it has also emerged that the premises of the garage are being used for the purposes of a restaurant. The nature of the permanent construction that has been carried out was established in the course of the evidence of the landlord. Since the premises originally consisted of a garage, there was a 4 ft. high wall

separating one garage from the other while the remaining portion consisted of a wire mesh. As a part of the conversion of the premises from a garage into a restaurant, the wire mesh was removed and a wall came to be constructed. The contention of the tenant was that by a letter dated 24th December, 1984 permission was granted by the landlord for carrying out the alteration. The Appellate Bench has noted that the permission ex facie was in respect of the premises bearing Shops Nos. 5 and 6 and not in respect of the garage. The flooring was also changed and a new door was substituted in the place of the existing wooden door of the garage. In these circumstances, the findings of the Court below do not suffer from any error. On the question of bonafide requirement, the concurrent finding of both the Courts is that the landlord desires to carry on the business of luxury/ tourist cars. No interference under Article 227 is warranted. The Petition is dismissed.

On the request of counsel appearing for the Petitioners and in order to enable the Petitioners to have recourse to the remedy in appeal, there shall be a direction to the effect that the decree for eviction shall not be executed for a period of eight

weeks from today. This shall be subject to the condition that the Petitioners shall file the usual undertaking within a period of two weeks of all the adult members of the family. The Petitioners shall also deposit all the arrears of rent before the Trial Court within a period of two weeks from today.